

AMENDED IN SENATE AUGUST 24, 2011

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 688

**Introduced by Assembly Member Pan
(Coauthor: Assembly Member Mitchell)**

February 17, 2011

An act to add *Section 114094.5 to, and to add Chapter 3.5* (commencing with Section 110286) to Part 5 of Division 104 of, the Health and Safety Code, relating to food and drug safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as amended, Pan. Food and drugs: sale.

The Sherman Food, Drug, and Cosmetic Law contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. *The California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code.* A violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a retailer from selling *or offering for sale after the expiration date an over-the-counter drug, as defined. The bill would also prohibit a retail food facility from selling or offering for sale after the expiration or “use by” date infant formula or baby food*

that is required to have this date on its packaging pursuant to federal law. ~~It would also prohibit a retailer from selling after the expiration or “use by” date an over-the-counter drug, as defined, that is required to have this expiration date on its packaging pursuant to that federal law.~~ This bill would make a violation of its provisions an infraction, punishable by a fine of not more than \$10 per day, calculated as prescribed. This bill would also authorize the department ~~and local enforcement entities~~ *or an enforcement agency, as specified*, to assess administrative penalties on a retailer who violates these provisions in the amount of \$10 per day for each item sold or offered for sale *in violation of these provisions*, in addition to other penalties authorized by law, ~~to be deposited as specified.~~ By creating a ~~new crime~~ *new crimes and imposing additional duties on local officials*, this bill would create a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 3.5 (commencing with Section 110286)
- 2 is added to Part 5 of Division 104 of the Health and Safety Code,
- 3 to read:

CHAPTER 3.5. EXPIRATION ~~AND USE BY~~ DATES

110286. (a) A retailer shall not sell *or offer for sale* after the expiration or “use by” date infant formula or baby food that is required to have this date on its packaging pursuant to the federal act and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 107.20 of Title 21 of the Code of Federal Regulations.

(b) ~~A retailer shall not sell after the expiration or “use by” date an over-the-counter drug.~~

(c) ~~This section shall not be construed to preclude any other action authorized by law.~~ *date an over-the-counter drug.*

(d)

(b) Notwithstanding Section 111825, any retailer who violates this section is guilty of an infraction, punishable by a fine of not more than ten dollars (\$10) per day for each item sold *or offered for sale* after the expiration or “use by” date. The fine shall be calculated based upon the number of days ~~between the expiration or “use by” date and the date of sale.~~ The date of sale shall be established by evidence of the proof of purchase, including, but not limited to, a sales receipt. *past the expiration date that the product is found being offered for sale or sold.*

(e)

(c) The department and local enforcement entities may assess administrative penalties on a retailer who violates this section in the amount of ten dollars (\$10) per day for each item sold in addition to other penalties authorized by law.

(1) ~~Moneys from penalties collected pursuant to this subdivision by the department shall be deposited into the General Fund.~~

(2) ~~Moneys from penalties collected pursuant to this subdivision by a local enforcement entity shall be deposited into the general fund of the local jurisdiction.~~

(f)

(d) For purposes of this section, the following definitions shall apply:

(1) “Baby food” shall have the meaning given to “baby foods” in paragraph (c) of Section 407.81 of Title 40 of the Code of Federal Regulations.

(2) “Infant formula” shall have the meaning given in subdivision (z) of Section 321 of Title 21 of the United States Code.

1 ~~(3) “Over-the-counter~~ *“over-the-counter drug” means a*
2 *nonprescription drug regulated by the federal Food and Drug*
3 *Administration that is required to have an expiration date on its*
4 *packaging pursuant to the federal act and federal regulations*
5 *adopted pursuant to the federal act, including, but not limited to,*
6 *Section 211.137 of Title 21 of the Code of Federal Regulations.*

7 ~~SEC. 2.—It is the intent of the Legislature in adding Chapter 3.5~~
8 ~~(commencing with Section 110286) to the Sherman Food, Drug,~~
9 ~~and Cosmetic Act (Part 5 (commencing with Section 109875) of~~
10 ~~Division 104 of the Health and Safety Code) that the department~~
11 ~~and local enforcement entities rely on existing enforcement~~
12 ~~authority and procedures to enforce this section.~~

13 ~~SEC. 3.—No reimbursement is required by this act pursuant to~~
14 ~~Section 6 of Article XIII B of the California Constitution because~~
15 ~~the only costs that may be incurred by a local agency or school~~
16 ~~district will be incurred because this act creates a new crime or~~
17 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
18 ~~for a crime or infraction, within the meaning of Section 17556 of~~
19 ~~the Government Code, or changes the definition of a crime within~~
20 ~~the meaning of Section 6 of Article XIII B of the California~~
21 ~~Constitution.~~

22 ~~SEC. 2. Section 114094.5 is added to the Health and Safety~~
23 ~~Code, to read:~~

24 ~~114094.5. (a) A retail food facility shall not sell or offer for~~
25 ~~sale after the “use by” date, infant formula or baby food that is~~
26 ~~required to have this date on its packaging pursuant to the federal~~
27 ~~act, as defined in Section 1009930, and federal regulations adopted~~
28 ~~pursuant to the federal act, including, but not limited to, Section~~
29 ~~107.20 of Title 21 of the Code of Federal Regulations.~~

30 ~~(b) Notwithstanding Section 114395, any retail food facility~~
31 ~~that violates this section is guilty of an infraction, punishable by~~
32 ~~a fine of not more than ten dollars (\$10) per day for each item sold~~
33 ~~or offered for sale after the “use by” date. The fine shall be~~
34 ~~calculated based upon the number of days past the “use by” date~~
35 ~~that the product is found being offered for sale or sold.~~

36 ~~(c) An enforcement agency may assess administrative penalties~~
37 ~~on a retail food facility that violates this section in the amount of~~
38 ~~ten dollars (\$10) per day for each item sold or offered for sale, in~~
39 ~~addition to other penalties authorized by law.~~

1 (d) *For purposes of this section, the following definitions shall*
2 *apply:*

3 (1) *“Baby food” shall have the meaning given to “baby foods”*
4 *in paragraph (c) of Section 407.81 of Title 40 of the Code of*
5 *Federal Regulations.*

6 (2) *“Infant formula” shall have the meaning given in subdivision*
7 *(z) of Section 321 of Title 21 of the United States Code.*

8 SEC. 3. *No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution for certain*
10 *costs that may be incurred by a local agency or school district*
11 *because, in that regard, this act creates a new crime or infraction,*
12 *eliminates a crime or infraction, or changes the penalty for a crime*
13 *or infraction, within the meaning of Section 17556 of the*
14 *Government Code, or changes the definition of a crime within the*
15 *meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

17 *However, if the Commission on State Mandates determines that*
18 *this act contains other costs mandated by the state, reimbursement*
19 *to local agencies and school districts for those costs shall be made*
20 *pursuant to Part 7 (commencing with Section 17500) of Division*
21 *4 of Title 2 of the Government Code.*